92-1258

No. _____

Supreme Court, U.S.
FILED
JAN 25 1992
OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1992

STATE OF MICHIGAN,
Petitioner,

-vs-

VINSON MAURICE NANCE,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MICHIGAN

AND APPENDICES

RICHARD THOMPSON
PROSECUTING ATTORNEY
OAKLAND COUNTY

MICHAEL J. MODELSKI
CHIEF, APPELLATE DIVISION

By: ROBERT C. WILLIAMS (P22365)
Assistant Prosecuting Attorney
1200 North Telegraph Road
Pontiac, Michigan 48341
(313) 858-5230

By: THOMAS S. RICHARDS (P19416)
Assistant Prosecuting Attorney
Counsel of Record
1200 North Telegraph Road
Pontiac, Michigan 48341
(313) 858-0679

Interstate Brief & Record Company, *a division of* North American Graphics, Inc.
1629 West Lafayette Boulevard, Detroit, MI 48216 (313) 962-6230

QUESTION PRESENTED FOR REVIEW

WHETHER THE COURT OF APPEALS OF THE STATE OF MICHIGAN MISAPPLIED THE PRINCIPLES SET FORTH IN *MICHIGAN* v *LONG*, 462 US 1032 (1983) AND ERRONEOUSLY SUPPRESSED HANDGUNS FOUND BY AN OFFICER IN THE GLOVE COMPARTMENT OF THE AUTOMOBILE DRIVEN BY RESPONDENT?

TABLE OF CONTENTS

PAGE

QUESTION PRESENTED FOR REVIEW i

INDEX TO AUTHORITIES CITED iv

CITATIONS TO OPINIONS BELOW 1

STATEMENT OF JURISDICTIONAL GROUNDS 1

CONSTITUTIONAL PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 3

REASONS FOR GRANTING THE WRIT 8

CONCLUSION 16

APPENDICES:

Appendix A – 3/2/89 OPINION: Oakland County Circuit Court A-1

Appendix B – 4/3/92 OPINION: Court of Appeals of the State of Michigan B-1

Appendix C – 10/27/92 ORDER: Supreme Court of the State of Michigan C-1

INDEX TO AUTHORITIES CITED

PAGE

CASES:

Michigan v *Long*, 463 US 1032 (1983) 1, 3, 8, 9, 13, 14, 15

People v *Gewarges*, 176 Mich App 65 (1989) 10

People v *Martinez*, 187 Mich App 160 (1991) 12, 14

People v *VanDiver*, 140 Mich App 484 (1985) 10

STATUTORY AUTHORITY:

MCL 750.227 3

MISCELLANEOUS AUTHORITY:

28 USC 1257(a) 1

No. _____

In The

Supreme Court of the United States

October Term, 1992

STATE OF MICHIGAN,
Petitioner,

-vs-

VINSON MAURICE NANCE,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MICHIGAN

CITATIONS TO OPINIONS BELOW

The order of the Supreme Court of the State of Michigan denying leave to appeal was entered on October 27, 1992 and is reported at __ Mich __ (1992). The unpublished opinion of the Court of Appeals of the State of Michigan was entered on April 3, 1992. The opinion of the Honorable Fred M. Mester, Oakland County Circuit Judge, was entered on March 2, 1989. Copies of the order and the opinions are included in the Appendix to this Petition.

STATEMENT OF JURISDICTIONAL GROUNDS

The order of the Supreme Court of the State of Michigan denying leave to appeal was entered on October 27, 1992. The jurisdiction of this Court is invoked under 28 USC 1257(a). The decision of the Court of Appeals of the State of Michigan is based upon the decision of *Michigan* v *Long*, 463 US 1032 (1983).

CONSTITUTIONAL PROVISIONS INVOLVED

The constitutional provisions involved in this Petition are the Fourth Amendment of the United States Constitution and Article I, Section 11 of the Constitution of 1963 of the State of Michigan. Those constitutional provisions read as follows:

Constitution of the United States,
Amendment IV – Searches and Seizures

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Constitution of the State of Michigan of 1963,
Article I § 11. Searches and seizures

> Sec. 11. The person, houses, papers and possessions of every person shall be secure from unreasonable searches and seizures. No warrant to search any place or to seize any person or things shall issue without describing them, nor without probable cause, supported by oath or affirmation. The provisions of this section shall not be construed to bar from evidence in any criminal proceeding any narcotic drug, firearm, bomb, explosive or any other dangerous weapon, seized by a peace officer outside the curtilage of any dwelling house in this state.

STATEMENT OF THE CASE

Respondent Nance was charged in Oakland County Circuit Court with the offense of Carrying a Pistol In A Motor Vehicle in violation of MCL 750.227. On October 21, 1988, prior to trial, the Honorable Fred M. Mester held an evidentiary hearing in conjunction with Respondent's motion to quash as evidence two pistols. In a written opinion, entered on March 2, 1989, Judge Mester denied Respondent's motion to quash as evidence the two pistols found and seized by police from the glove box of an automobile driven by Respondent. Judge Mester held that the search of the glove box and the seizure of the postols was proper under the standard set forth by this Court in *Michigan* v *Long*, 463 US 1032 (1983). A copy of Judge Mester's opinion is included in the Appendix to this Petition at page A-1.

Respondent was convicted as charged by a jury on May 10, 1990. The Court of Appeals of the State of Michigan reversed Respondent's conviction in an unpublished memorandum opinion issued on April 3, 1992. The Court of Appeals of the State of Michigan applied the standard set forth by this Court in *Michigan* v *Long*, *supra*, to the facts in this case. A copy of the opinion of the Court of Appeals of the State of Michigan is included in the Appendix at page B-1. The Supreme Court of the State of Michigan denied Petitioner's application for leave to appeal in an order issued on October 27, 1992. The Supreme Court denied the application because that Court was not persuaded that the question presented should be reviewed by that Court. A copy of the order of the Supreme Court of the State of Michigan is included in the Appendix at page C-1.

The prosecution's first witness in the evidentiary hearing on October 21, 1988, was Calvin Rix, a Public

Safety Officer for the City of Oak Park. Officer Rix had been a police officer for 18 years. (Evidentiary Hearing Transcript of October 21, 1988, hereafter EHT, 6.) Officer Rix was on duty in a patrol car at 7:20 p.m. on March 15, 1988, accompanied by a civilian auxiliary police officer, Barry Rose. (EHT, 6, 9, 16.) Officer Rix observed a gray Renault automobile with white lights in the rear pull into a parking lot of a party store at the corner of 10 Mile and Scotia in the City of Oak Park. Officer Rix also pulled his vehicle into the parking lot. (EHT, 6.) Officer Rix watched as Respondent's co-defendant, Goodwin, got out of the driver's side of the Renault and walked over to a Suzuki automobile in the parking lot. Goodwin got into the passenger's side of the Suzuki. Officer Rix was parked between the Renault and the Suzuki and could see into both vehicles. (EHT, 6-8.) Officer Rix could see another individual sitting in the passenger's side of the Renault. (EHT, 8.)

Officer Rix testified further that he saw Goodwin and another subject who was in the driver's side of the Suzuki close together in that vehicle. Both those subjects looked startled when they saw Officer Rix observing them. (EHT, 8-9.) Officer Rix ran the license plates of the Renault and the Suzuki through a police computer and then drove to another parking lot across the street and turned off the lights on his patrol car. Officer Rix saw Goodwin look around, get out of the Suzuki, look at Rix's patrol car and then run to the Renault and get in the passenger's side. (EHT, 9-10.) The subject in the passenger's seat of the Renault, later identified as Respondent Nance, moved across the seat into the driver's position. (EHT, 10, 15.) The engine of the Renault had never stopped running and the engine of the Suzuki was also running. Both the Renault and the Suzuki left the parking lot at a high rate of speed in different directions. Officer Rix called for a back-up by

radio and said he thought he had seen a drug deal taking place. (EHT, 11-12.) Officer Rix pursued the Renault at approximately 45 to 50 m.p.h. in a 25 m.p.h. zone. When Officer Rix turned on his overhead lights and beacon lights, the Renault hit the brakes and turned into the driveway of a private home. Officer Rix pulled his patrol car in behind the Renault. (EHT, 12-13.) Officer Rix stopped the Renault for traffic violations, though he had his suspicions about a drug deal. (EHT, 36.)

Officer Rix testified further that the Renault began backing up toward his patrol car and he backed up his car as he watched Goodwin and Respondent in the Renault. Goodwin leaned toward Respondent while the Renault was in reverse and then the Renault abruptly stopped. (EHT, 13-14.) Officer Rix got out of his patrol car and went to the driver's side of the Renault. As Officer Rix approached the Renault, he heard the glove box in the Renault slam. Officer Rix shined his flashlight into the Renault and observed Goodwin holding papers describing the Renault and with his hand up against the glove box. (EHT, 14-15.) Officer Rix requested a driver's license and the automobile's registration from Respondent. Respondent produced a driver's license in the name of Williams and was given the registration by Goodwin. Officer Rix requested Respondent to exit the Renault and patted Respondent down, finding nothing. (EHT, 16.) While Officer Rose watched Respondent, Officer Rix requested Goodwin to exit the Renault and patted Goodwin down, finding $566 in cash and a beeper. Officer Rix patted Respondent and Goodwin down for his own safety because he feared he had seen a drug deal go down and was fearful for his own safety and that of the auxiliary officer. (EHT, 18.)

After two other officers arrived at the scene, Officer Rix found that the glove box of the Renault was locked.

There was no key for the glove box on the key ring in the ignition of the Renault. Officer Rix asked Goodwin if he knew where the key for the glove box was. Goodwin was extremely nervous, sweating profusely and his voice was quivering. Goodwin said the Renault was his uncle's car and his uncle had not given him a key for the glove box. Officer Rix asked Respondent where the glove box key was. Respondent answered that he had never seen a key for the glove box and was just driving the vehicle which did not belong to him. (EHT, 19.)

Officer Rix testified further that he went to the Renault and looked under the seats. Officer Rix then pried open the glove box with a screwdriver enough to see into it. Officer Rix saw a .38 caliber loaded revolver in the glove box. Both Respondent and Goodwin were then arrested for carrying a concealed weapon. (EHT, 20.) Officer Rix looked into the glove box because based on all the facts he knew, he believed that a drug transaction had taken place. (EHT, 24.) Officer Rix had made approximately 30 to 40 arrests concerning drug dealings. Officer Rix knew the glove box had been open and was all of a sudden locked with no key available. Officer Rix knew weapons were sometimes part of drug transactions. Officer Rix believed that there was a weapon in the glove box and felt that if he put Respondent and Goodwin back in the Renault, his own life would be in jeopardy. Officer Rix believed that if Respondent and Goodwin had a key for the glove box, there would be a shoot-out. Officer Rix believed that because he had been in that position before. (EHT, 24-25.)

Officer Rix testified further that he transported Goodwin to the police station in the backseat of his patrol car. At the police station, Officer Rix found a vanilla-colored packet on the seat where Goodwin had been sitting. Goodwin dropped another packet in the

booking area and a third packet was found in Goodwin's coat pocket. Those three packets were the basis for a separate drug charge against Goodwin. (EHT, 21-23.) Officer Rix was present when another officer searched Respondent at the police station and found a key in Respondent's sock. The key was for the glove box of the Renault. (EHT, 23.) Officer Rix used the key to open the glove box and found the loaded .38 caliber revolver and also a loaded .44 caliber revolver. (EHT, 26.) Officer Rix searched the Renault at the police station pursuant to the standard inventory procedure of the Oak Park Public Safety Department. When an officer impounds a vehicle, the officer must inventory the property in the vehicle and fill out a standard form. The inventory procedure is mandatory and an individual officer has no discretion to depart from the inventory procedure. (EHT, 44-45.)

Respondent's co-defendant, Ralph Goodwin, testified at the evidentiary hearing. Goodwin testified that he was at the party store at 7:00 p.m. on March 15, 1988 to purchase lottery tickets. Goodwin got into the Suzuki to speak with a friend to talk about what to do later on. (EHT, 53-54.) When Goodwin saw the police car with its lights off, Goodwin felt there was something going down and he should get out of police business. Goodwin had Respondent drive after Goodwin saw the police because Goodwin's driver's license was not valid. (EHT, 55.) Goodwin had the beeper because he worked for a maintenance service. (EHT, 59.) Goodwin testified that Officer Rix busted open the glove compartment. (EHT, 60.) Goodwin stated that neither he nor Respondent opened the glove box that evening and that the gun in the glove box was not his gun. (EHT, 62.)

The trial court upheld the look into the glove box and the subsequent seizure of the handguns in an opinion

filed on March 2, 1989. The trial court relied upon the decision of this Court in *Michigan* v *Long*, *supra*. The Court of Appeals of the State of Michigan reversed the decision of the trial court in an unpublished opinion entered on April 3, 1992. The Court of Appeals held that the trial court had erroneously applied the holding of this Court in its decision in *Michigan* v *Long*, *supra*. The Supreme Court of Michigan denied Petitioner's application for leave to appeal in an order entered on October 27, 1992. Petitioner now seeks a writ of certiorari to the Court of Appeals of the State of Michigan.

REASONS FOR GRANTING THE WRIT

THE COURT OF APPEALS OF THE STATE OF MICHIGAN MISAPPLIED THE PRINCIPLES SET FORTH BY THIS COURT IN *MICHIGAN* v *LONG*, 463 US 1032 (1983) AND ERRONEOUSLY SUPPRESSED HANDGUNS FOUND BY AN OFFICER IN THE GLOVE COMPARTMENT OF THE AUTOMOBILE DRIVEN BY RESPONDENT.

The Court of Appeals of the State of Michigan interpreted this Court's decision in *Michigan* v *Long*, 463 US 1032 (1983) and concluded that the trial court erred in ruling that the examination of the glove compartment of the automobile driven by Respondent was lawful. The Supreme Court of the State of Michigan declined to review the decision of the Court of Appeals of the State of Michigan. Petitioner submits that the trial court, pursuant to the decision of this Court in *Michigan* v *Long*, *supra*, ruled correctly that Officer Rix had a reasonable belief that the Respondent might gain control of weapons and therefore that Officer Rix had the legal right to look into the glove compartment prior to permitting the Respondent to reenter the Renault automobile.

The trial court entered a written opinion (Appendix, page A-1) in which the trial court upheld the search of the glove box and the seizure of the two handguns. In that opinion, the trial court correctly followed the applicable law as set forth by this Court in *Michigan* v *Long*, 463 US 1032 (1983). In *Michigan* v *Long*, *supra*, this Court held that when an officer has a reasonable belief that a suspect is dangerous and may have access to weapons, the officer may search the passenger compartment of the suspect's vehicle. The officer's belief must be based upon specific and articulable facts and rational inferences arising from those facts. This Court stated its holding as follows:

> "Our past cases indicate then that protection of police and others can justify protective searches when police have a reasonable belief that the suspect poses a danger, that roadside encounters between police and suspects are especially hazardous, and that danger may arise from the possible presence of weapons in the area surrounding a suspect. These principles compel our conclusion that the search of the passenger compartment of an automobile, limited to those areas in which a weapon may be placed or hidden, is permissible if the police officer possesses a reasonable belief based on 'specific and atriculable facts which, taken together with the rational inferences from those facts, reasonably warrant' the officer in believing that the suspect is dangerous and the suspect may gain immediate control of weapons."
>
> *Michigan* v *Long*, *supra*, 1049-1050.

The Court of Appeals of the State of Michigan has reiterated and followed the rule of law set forth in *Michigan* v *Long*, *supra*, concerning warrantless protec-

tive searches for weapons. The Court of Appeals has upheld such protective searches under factual circumstances analogous to the instant case in *People* v *VanDiver*, 140 Mich App 484 (1985) and *People* v *Gewarges*, 176 Mich App 65 (1989). In *Gewarges*, *supra*, the Court of Appeals held as follows:

> "Even though Defendant was outside the vehicle, we are convinced that the entire Terry stop and resulting confrontation constituted a legitimate effort by the officer to protect himself. Had Officer Truitt terminated his investigation prematurely, defendants would have been free to reenter the vehicle and make use of any weapon overlooked. The Fourth Amendment simply does not stand as a bar to such reasonable police conduct. *Michigan* v *Long*, 463 US 1032; 103 S Ct 3469; 74 L Ed 2d 1201 (1983)."
>
> *People* v *Gewarges*, *supra*, 72-73.

In the present case, as in *Michigan* v *Long*, *supra*, and *People* v *Gewarges*, *supra*, the police officer had a reasonable belief based upon articulable facts that Respondent might gain control of a dangerous weapon.

The trial court in its written opinion relied upon a number of articulable facts in finding that Officer Rix had a reasonable belief that Respondent was dangerous and might gain immediate control of a weapon. The trial court set forth those facts as follows:

> "This Court is satisfied that Officer Rix possessed a reasonable belief based on articulable facts that the Defendant was dangerous and may gain immediate control of a weapon. Those facts are: (1) Officer Rix had just witnessed what he believed to be a drug deal based upon his 17 years experience; (2) there was flight by the

> Defendant immediately upon seeing the police vehicle; (3) the automobile occupied by the Defendant fled at a high rate of speed and in a manner that would reasonably lead a person to believe he and his companion were trying to escape; (4) the closing of the glove compartment as the officers approached was a furtive gesture that would reasonably lead a person to believe something had just been placed in that compartment; (5) the denial of any access to the glove compartment by the Defendant and his companion was to Officer Rix and Officer Rose an obvious lie in that the officers had heard it open and close and Officer Rose had observed it being closed, therefore, they could be led to believe that a weapon may be located there; (6) the money and beeper found on the Defendant were consistent with Officer Rix's knowledge of people involved in illegal drugs and, further, that guns were often a part of the drug dealer's business equipment; (7) the Defendant was acting nervous and sweating profusely when Officer Rix asked about the glove compartment.
>
> Therefore, this Court is satisfied that with these articulable facts, coupled with Officer Rix's experience, the officers, as rational persons, could have but one conclusion — that either a weapon or some contraband was located within the glove compartment. Officer Rix's fear that the glove compartment contained a weapon was justified and reasonable."
>
> *People* v *Nance*, Opinion of the trial court of March 1, 1989, 5-6. (Appendix, pp. A-4–A-5)

The People submit that the trial court did not abuse its discretion in concluding that Officer Rix's belief

was a reasonable one based upon all of the factual circumstances.

The Court of Appeals of the State of Michigan will reverse a trial court's decision on a motion to suppress evidence only if the decision is clearly erroneous and leaves the Court of Appeals with a definite conviction that a mistake was made. *People* v *Martinez*, 187 Mich App 160; 171 (1991). Without specifically referring to that standard in this case, the Court of Appeals concluded that the officers did not have a reasonable belief that Respondent and his companion were dangerous and might have access to weapons. The pertinent portion of the opinion of the Court of Appeals reads as follows:

> "In *Michigan* v *Long*, 463 US 1032; 103 S Ct 3469; 77 L Ed 2d 1201 (1983), the United States Supreme Court held that when an officer has a reasonable belief that a suspect is dangerous and may have access to weapons, the officer may search the passenger compartment of the suspect's vehicle. The officer's belief must be based upon specific and articulable facts and rational inferences arising from those facts.
>
> The question before us is whether the evidence available to the officers justifies such a reasonable belief. We conclude that it does not.
>
> The only evidence upon which the officer based his theory that there was contraband in the car was that he had seen defendant and a driver pull into a parking lot and that the driver had entered the passenger compartment of another vehicle and conversed briefly with someone. The driver then looked up, saw the officer, seemed startled, and 'jogged' back to his car.

> The driver entered the passenger's side of the car, and defendant began driving. The officer testified that defendant left the parking lot at a high rate of speed. The officer pulled the two men over, and as he was approaching the car, heard what he believed was the sound of a glove box closing. When the officer asked about the glove box, defendant's companion denied having a key to it and appeared nervous.
>
> We find this insufficient. Though the trooper [sic] undoubtedly was suspicious and believed that the driver had been involved in a drug deal, this was not sufficient to provide a reasonable belief that the car contained contraband. There were insufficient objective facts to support a reasonable belief that evidence of crime was to be found in the car. See *People* v *Martinez*, 187 Mich App 160; 466 NW2d 380 (1991).
>
> We reverse defendant's conviction."
>
> *People* v *Vinson Nance*, unpublished memorandum opinion of the Court of Appeals (No. 131074, decided April 3, 1992.) (Appendix, pp. B-1–B-2)

The People submit that the decision of the Court of Appeals misapplied the decision of this Court in *Michigan* v *Long*, *supra* and that Officer Rix examined the glove box pursuant to a reasonable belief that Respondent was dangerous and might have access to weapons if Respondent was permitted to reenter the Renault.

The Court of Appeals of the State of Michigan cited two cases in its opinion in this case. The Court of Appeals cited *Michigan* v *Long*, *supra*, for the rule of law that if officers have a reasonable belief that an individual is dangerous and may have access to a weapon,

the officers may search the passenger compartment of the individual's vehicle. The Court of Appeals concluded its opinion by citing *People* v *Martinez*, *supra*, for the proposition that there were insufficient facts to support a reasonable belief that "evidence of crime" was in the vehicle. Petitioner submits that the decisions in neither *Michigan* v *Long*, *supra*, nor *People* v *Martinez*, *supra*, required reversal by the Court of Appeals of the State of Michigan in this case. In each of those cases, the searches of the vehicles in question were ultimately upheld.

The Court of Appeals of the State of Michigan did not even apply the proper standard set forth by this Court in *Michigan* v *Long*, *supra*. The Court of Appeals applied a standard of ". . . a reasonable belief that the car contained contraband . . ." and ". . . a reasonable belief that evidence of crime was to be found in the car." *People* v *Nance*, *supra*, Appendix, page B-2. The standard set forth by this Court in *Michigan* v *Long*, *supra*, is a reasonable belief based on specific and articulable facts that a suspect is dangerous and may gain immediate control of a weapon. *Michigan* v *Long*, *supra*, 1049.

Officer Rix was an experienced officer who definitely believed that there might be a weapon in the Renault automobile. The Petitioner submits that Officer Rix's belief was reasonable based upon all the facts known to him. Officer Rix had observed what he reasonably believed to be a drug transaction. Upon seeing a police car, Respondent, Goodwin and the Suzuki all exited the parking lot quickly. Respondent and Goodwin leaned close together as the Renault stopped. The officers heard the glove box of the Renault being closed as they approached that vehicle. Under such circumstances, the officers had valid reason to fear that a weapon was present in the Renault, and especially in the glove box of

the Renault. The officers acted legally and properly in looking into the glove box of the Renault prior to permitting Respondent and Goodwin to reenter the vehicle.

Officer Rix examined the interior of the glove box pursuant to a reasonable belief that Respondent was dangerous and might gain control of a weapon upon reentry of the Renault. A similar search was upheld by this Court in *Michigan* v *Long*, *supra*. The Court of Appeals of the State of Michigan misapplied the principle of federal law set forth by this Court in this Court's decision in *Michigan* v *Long*, *supra*. The Court of Appeals misapplied that principle by concluding that there were insufficient facts to support the officer's belief that Respondent was dangerous and could have access to a weapon in the automobile. This Court should grant Petitioner's Petition For A Writ Of Certiorari, reverse the decision of the Court of Appeals of the State of Michigan and reinstate the Respondent's conviction.

CONCLUSION

WHEREFORE, Richard Thompson, Prosecuting Attorney in and for the County of Oakland, by Robert C. Williams, Assistant Prosecuting Attorney, respectfully requests that this Honorable Court grant this Petition For A Writ Of Certiorari to review the judgment of the Court of Appeals of the State of Michigan or, in the alternative, grant summary reversal of the decision of the Court of Appeals of the State of Michigan.

Respectfully submitted,

RICHARD THOMPSON
PROSECUTING ATTORNEY
OAKLAND COUNTY

MICHAEL J. MODELSKI
CHIEF, APPELLATE DIVISION

By: /s/ ROBERT C. WILLIAMS (P22365)
Assistant Prosecuting Attorney

By: /s/ THOMAS S. RICHARDS (P19416)
Assistant Prosecuting Attorney
Counsel of Record
1200 North Telegraph Road
Pontiac, Michigan 48341
(313) 858-0679

DATED: January 21, 1993

APPENDICES TO PETITION FOR CERTIORARI

• • •

APPENDIX A

OPINION

(State of Michigan — Circuit Court — County of Oakland)

(Entered March 2, 1989)

(PEOPLE OF THE STATE OF MICHIGAN, Plaintiff, v RALPH DUANE GOODWIN a/k/a GLENN ANTHONY STROUD, Defendant – Case No. 88-85404-FH; PEOPLE OF THE STATE OF MICHIGAN, Plaintiff, v VINSON MAURICE NANCE a/k/a ROMELL WILLIAMS, Defendant – Case No. 88-85405-FH)

This matter comes before this Court on Defendants' Motion to Quash Evidence. Officers Barry Rose and Calvin Rix were on regular police car patrol out of the Oak Park Police Department on March 15, 1988, at approximately 7:15 p.m. Officer Rose is an auxiliary police officer with the Oak Park Police Department. Officer Rix is a regular police officer with the same department. Calvin Rix has been a public safety officer for the City of Oak Park for 17 years, and during that period of time, he has observed four or five drug transactions. During his career, he has stopped numerous vehicles where drugs have been involved, and in those situations, there have been weapons in the vehicles. Officer Rix calculated that weapons were involved in such stops 30 or 40 times.

Around 7:20 p.m. they were patrolling the Ten Mile and Scotia area with particular reference to the Scotia Party Store at that location. Officer Rix's attention was drawn to a Renault vehicle that he and Officer Rose

observed having white lights rather than red in the rear of the vehicle. The vehicle was a 1988 Renault Medallion. As the officers pulled into the Scotia Party Store lot, the driver of the Renault vehicle exited that vehicle and walked toward a grey Suzuki jeep. While the driver was in the grey Suzuki jeep, he left his automobile engine running. Officer Rix found it strange that one would get out of his vehicle and leave his car running. He then observed that the driver of the Renault, who had entered the Suzuki, was talking with another individual and that it appeared to him that something was being exchanged. He could not tell what they were doing, but did note that their heads were together. The driver of the Renault then exited the Suzuki and apparently observed Officer Rix's squad car.

Upon such alleged observation, the driver ran to the Renault and got in the driver's side. At this juncture, Officer Rix surmised that a drug transaction was going down. Both vehicles started out of the lot at a high rate of speed. The Renault went west through the Scotia Party Store lot and exited onto North Bound Scotia at a high rate of speed without stopping. The driver of the Suzuki spotted Officer Rix's squad car and started out at a high rate of speed. He slammed on his brakes and turned right at the exit. Officer Rix decided to follow the Renault as it entered Scotia at a high rate of speed. As the officers were positioning the police car's beacons, the vehicle turned into a driveway just north of Ten Mile in Huntington Woods. The police vehicle pulled behind the Renault and placed the spotlight in the window. The Renault driver shut off his engine. Officer Rix approached the vehicle on the driver's side and as he did so he heard the glove box slam shut. At the same time, Officer Rose was approaching the vehicle on the passenger side and observed the glove box being closed.

Just prior to approaching the vehicle, Officer Rix observed both the Defendant and the driver bending toward each other. However, he could not see what they were doing. When Officer Rix was patting down the Defendants, he found a beeper and a large amount of cash in the amount of $500 on the Defendant. Believing now that his suspicions of a drug transaction having occurred was confirmed, Officer Rix returned to the Defendant's vehicle with the belief that either guns or controlled substances may have been in the vehicle. Officer Rix testified at the preliminary examination that he wanted to make sure his life was not in jeopardy before he allowed the Defendant to return to his vehicle.

Officer Rix also testified at the preliminary examination that based upon his experiences where there is a drug transaction, there are also weapons involved. He found the glove box locked and there was no key ring. Officer Rix returned to the Defendant and the passenger of the vehicle. Though the temperature was about 25 degrees, the Defendant was sweating profusely while Officer Rix was talking to him. He also appeared very nervous and said that he didn't know anything about the vehicle nor did he have a key for the glove box. The passenger of the vehicle gave the same response.

Officer Rix returned to the car and used a screwdriver to open the glove box. Officer Rix observed a handgun in the glove box. Subsequently, both the Defendant and the Co-defendant were arrested for carrying a concealed weapon. Ultimately, the keys to the glove box were found in the Co-defendant's sock. The glove box was found to contain a loaded .44 magnum handgun and a loaded .38 special handgun.

The respective attorneys in this matter have cited *Michigan* v *Long*, 463 U.S. 1032 (1983) as the salient case

in these matters. In deciding this matter, the Court recites the following from *Long*:

> These principles compel our conclusion that the search of the passenger compartment of an automobile, limited to those areas in which a weapon may be placed or hidden, is permissible if the police officer possesses a reasonable belief based on "specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant" the officer in believing that the suspect is dangerous and the suspect may gain immediate control of weapons.

This Court, based upon the standards set out in *Long*, is satisfied that Officer Rix was justified in his search of the automobile and more specifically, of the glove compartment. The glove compartment was in an area in which a weapon may be placed or hidden. In this case, two loaded handguns were located within that glove compartment.

This Court is satisfied that Officer Rix possessed a reasonable belief based on articulable facts that the Defendant was dangerous and may gain immediate control of a weapon. Those facts are: (1) Officer Rix had just witnessed what he believed to be a drug deal based upon his 17 years experience; (2) there was flight by the Defendant immediately upon seeing the police vehicle; (3) the automobile occupied by the Defendant fled at a high rate of speed and in a manner that would reasonably lead a person to believe he and his companion were trying to escape; (4) the closing of the glove compartment as the officers approached was a furtive gesture that would reasonably lead a person to believe something had just been placed in that compartment; (5) the denial of any access to the glove compartment by the Defendant and his companion was to

Officer Rix and Officer Rose an obvious lie in that the officers had heard it open and close and Officer Rose had observed it being closed, therefore, they could be led to believe that a weapon may be located there; (6) the money and beeper found on the Defendant were consistent with Officer Rix's knowledge of people involved in illegal drugs and, further, that guns were often a part of the drug dealer's business equipment; (7) the Defendant was acting nervous and sweating profusely when Officer Rix asked about the glove compartment.

Therefore, this Court is satisfied that with these articulable facts, coupled with Officer Rix's experience, the officers, as rational persons, could have but one conclusion — that either a weapon or some contraband was located within the glove compartment. Officer Rix's fear that the glove compartment contained a weapon was justified and reasonable. This Court is satisfied that his belief was well founded and that has been substantiated as the result of finding two loaded handguns in the glove compartment.

Therefore, this Court denies Defendant's Motion to Quash.

It Is So Ordered.

/s/ FRED M. MESTER (P-17653),
CIRCUIT JUDGE

Dated: March 1, 1989

APPENDIX B

OPINION

(State of Michigan — Court of Appeals)

(Entered April 3, 1992)

(PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v VINSON MAURICE NANCE, Defendant-Appellant — No. 131074)

Before: Reilly, P.J., and MacKenzie and Weaver, J.J.

MEMORANDUM

Following a jury trial defendant was convicted of carrying a concealed weapon, MCL 750.227; MSA 28.424. Defendant now appeals as of right.

Setting forth three assignments of error, defendant argues that the court erred in denying his motion to quash, that there was insufficient evidence for the jury to find defendant had knowledge of the presence of weapons in the car he was driving, and that there was insufficient evidence for the jury to find defendant "carried" the weapons in the car he was driving. We reverse, finding that the court erred in admitting evidence found during a warrantless search of the glove box in the vehicle driven by defendant.

In *Michigan* v *Long*, 463 US 1032; 103 S Ct 3469; 77 L Ed 2d 1201 (1983), the United States Supreme Court held that when an officer has a reasonable belief that a suspect is dangerous and may have access to weapons, the officer may search the passenger compartment of the suspect's vehicle. The officer's belief must be based upon specific and articulable facts and rational inferences arising from those facts.

The question before us is whether the evidence available to the officers justifies such a reasonable belief. We conclude that it does not.

The only evidence upon which the officer based his theory that there was contraband in the car was that he had seen defendant and a driver pull into a parking lot and that the driver had entered the passenger compartment of another vehicle and conversed briefly with someone. The driver then looked up, saw the officer, seemed startled, and "jogged" back to his car. The driver entered the passenger's side of the car, and defendant began driving. The officer testified that defendant left the parking lot at a high rate of speed. The officer pulled the two men over, and as he was approaching the car, heard what he believed was the sound of a glove box closing. When the officer asked about the glove box, defendant's companion denied having a key to it and appeared nervous.

We find this insufficient. Though the trooper undoubtedly was suspicious and believed that the driver had been involved in a drug deal, this was not sufficient to provide a reasonable belief that the car contained contraband. There were insufficient objective facts to support a reasonable belief that evidence of crime was to be found in the car. See *People* v *Martinez*, 187 Mich App 160; 466 NW2d 380 (1991).

We reverse defendant's conviction.

/s/ Maureen P. Reilly
/s/ Barbara B. MacKenzie
/s/ Elizabeth A. Weaver

APPENDIX C

ORDER DENYING LEAVE TO APPEAL

(State of Michigan — Supreme Court)

(Entered October 27, 1992)

(PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant, v VINSON MAURICE NANCE, Defendant-Appellee — SC: 93710; COA: 131074; LC: 88-085405)

Michael F. Cavanagh, Chief Justice;
Charles L. Levin, James H. Brickley, Patricia J. Boyle, Dorothy Comstock Riley, Robert P. Griffin, Conrad L. Mallett, Jr., Associate Justices.

On order of the Court, the application for leave to appeal is considered, and it is DENIED, because we are not persuaded that the question presented should be reviewed by this Court.

Boyle, and Riley, J.J., would grant leave to appeal.

(Certification Omitted)